
Appendix XI

Coastal Coordination Council Rule on Federal Consistency Review

(1) specific findings stating why the action is inconsistent with the CMP goals and policies; and

(2) recommendations on how to modify the action to make it consistent.

(b) The council may not remand a local government action unless it determines that the action is inconsistent with the CMP goals and policies.

(c) The council shall take action only when a quorum exists. To affirm, remand, or reverse an action requires an affirmative vote of a majority of all council members.

(d) The council may recommend that a local government undertake only such actions as are within the authority of the local government. The council may provide in its remand that the local government action will be automatically reversed without further council action if the local government does not reconsider its action in light of the council's recommendations within 90 days after taking or authorizing the action.

§505.71. Local Government Action on Remand.

(a) The local government shall modify or amend the action on remand to make it consistent with the CMP goals and policies.

(b) If the local government decides not to amend or modify its action as recommended by the council, the local government shall notify the council of that decision in writing immediately. The notification shall contain the reasons for the local government's decision.

§505.72. Council Review of Local Government Action on Remand.

(a) To review an action on remand, the chairman or at least three other council members must submit the action to the council secretary in writing no later than 15 days after the local government has taken or authorized the action on remand.

(b) The council secretary will place the local government action on remand on the agenda of the earliest council meeting at which consideration of the item is reasonably practicable. If no regularly scheduled council meeting will allow the council to act on the local government action on remand within 70 days of the date the local government took or authorized the action on remand, the council secretary shall notify the chairman, who shall schedule a special meeting to consider the action and any other appropriate matters.

(c) The council secretary shall provide notice of the hearing at which the

council will review the action in accordance with §505.67(a) of this title (relating to Council Procedures for Review of Local Government Actions). The council shall consider only those items listed in §505.67(b) of this title (relating to Council Procedures for Review of Local Government Actions).

(d) The council shall determine whether an action is consistent with the CMP goals and policies no later than 70 days after the local government took or authorized the action on remand. Failure by the council to make this determination within 70 days of the date the local government took or authorized the action precludes the council from reversing the action.

(e) If the council determines that the local government action on remand is consistent with the CMP goals and policies, the action is affirmed. If the council determines that the local government action on remand is inconsistent with the CMP goals and policies, the action is reversed. The only basis on which the council may reverse an action is that the action is inconsistent with the CMP goals and policies. The council decision to affirm or reverse a local government action must be in writing. A decision to reverse a local government action shall include findings and recommendations in accordance with §505.70(a) of this title (relating to Council Action on Review of Local Government Action).

(f) The council's decision to reverse an action renders the action void. The specific activities authorized by the local government action reversed by the council shall cease.

§505.73. Judicial Review. A person aggrieved by a final action of the council may appeal to a district court under the Texas Government Code, Title 10, Subtitle A, Chapter 2001 (Texas APA), §2001.171.

§505.74. Enforcement.

(a) The attorney general, at the request of the council, shall file in a district court of Travis County, or in the county in which the violation occurs, a suit to enforce the Coastal Coordination Act or the rules adopted pursuant thereto.

(b) The council shall not request that the attorney general pursue legal action against any individual for any violation of, or failure to comply with, this chapter, Chapter 501 of this title (relating to Coastal Management Program), Chapter 504 of this title (relating to Special Area Management Planning), or Chapter 506 of this title (relating to Council Procedures for Federal Consistency with Coastal Management Program Goals and Policies).

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 19, 1994.

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Chapter 506. Council Procedures for Federal Consistency with Coastal Program Goals and Policies

• 31 TAC §§506.11, 506.12, 506.20-506.28, 506.30-506.35, 506.40-506.44, 506.50-506.52

The Coastal Coordination Council (council) adopts new Chapter 506, §§506.11, 506.12, 506.20-506.28, 506.30-506.35, 506.40-506.44, and 506.50-506.52, concerning council procedures to ensure that actions taken or authorized by federal agencies are consistent with the goals and policies of the Texas Coastal Management Program (CMP), with changes to the proposed text as published in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1932).

Sections 506.11, 506.12, 506.24, 506.25, 506.27, 506.30, 506.32, 506.33, 506.41, and 506.50 are adopted with changes to the proposed text. Sections 506.20-506.23, 506.26, 506.28, 506.31, 506.34, 506.35, 506.40, 506.42-506.44, 506.51, and 506.52 are adopted without changes to the proposed language. The complete text of Chapter 506 is republished for the convenience of the reader.

This chapter is adopted pursuant to the Texas Natural Resources Code, Chapter 33, Subchapters C and F (Coastal Coordination Act), which require the General Land Office (GLO) to develop the CMP and the council to promulgate CMP goals and policies.

This chapter lists the federal actions which may be reviewed by the council to determine consistency, requires applicants and federal agencies to make consistency certifications and determinations, and identifies information necessary for the state to evaluate the certifications and determinations. This chapter provides the parameters of the council's jurisdiction and its procedures for reviewing federal actions which may adversely affect the coastal natural resource areas (CNRAs) designated in §501.2(a) of this title (relating to Findings). This chapter applies only to the listed federal actions in §506.12. Actions affecting CNRAs both within and outside the CMP boundary may be subject to the requirements of the CMP, including review by the council. Section 506.12(a) lists the federal

actions within the CMP boundary which may adversely affect a CNRA. Section 506.12(b) lists the federal actions outside the CMP boundary. Actions outside the boundary are those that occur on excluded federal land or on the Outer Continental Shelf (OCS).

Where a federal development project is conducted in phases, §506.23 permits a single consistency determination for the entire project. Current ongoing federal activities must conform with CMP goals and policies once the CMP is approved by the federal government. Section 506.24(a) requires federal agencies to provide consistency determinations for ongoing activities to the council within 120 days of federal CMP approval. Significantly, in §506.24(c), the council announces its intention not to require a consistency determination for ongoing dredging of navigational channels.

Procedures for public notice are contained in §§506.25, 506.32, and 506.41. These and other procedures are found in three separate sections because, pursuant to existing federal regulations, different types of federal actions are subject to different schedules for consistency review. Similarly, procedures for referral of actions to the council are contained in §§506.26, 506.33 and 506.42, while procedures for council review are contained in §§506.27, 506.34 and 506.43. The adopted procedures generally correspond with federal requirements in the Code of Federal Regulations, Title 15, Part 930, but ensure that the review process is more accessible to Texas residents. The procedures describe how federal agencies must comply with state rules, and are also designed to minimize delay.

Council review of federal actions may be limited through use of a general consistency determination, described in §506.28. This section provides for the formation of an interagency coordination group to review federal development projects. The council may issue a general consistency determination if the review group has developed a general consistency agreement. This provision ensures that certain activities and planned development will not be subjected to duplicative council review. Section 506.35 eliminates the need for consistency review of every potential minor impact to CNRAs by allowing general concurrences. The council may use general concurrences for repetitive actions which cumulatively may impact a CNRA.

Review of federal actions to ensure consistency with CMP goals and policies allows Texas to gain some control over the federal activities that shape and determine the destiny of its vital CNRAs. The rule also describes notice procedures and establishes the schedule for council review of federal actions to determine consistency with CMP goals and policies.

From its outset, the CMP has responded to the real concerns of Texans: addressing erosion, protecting coastal natural resources and balancing environmental protection with economic development, among others. The council proposed the CMP as rules on March 18, 1994 (19 TexReg 1895). The council held seven public hearings, six of them in population centers along the entire length of the Texas coast. The period for public comment

originally expired May 2, 1994. Including both public testimony at hearings and written comments, nearly 200 commenters offered over 1,000 comments on virtually every portion of the CMP.

In addition to substantive comments, the council received numerous requests for additional time to review the CMP. Numerous commenters also wished to review, before the council finally adopts the CMP as rules, revisions to the proposed rules. Ordinarily, members of the public who may be affected by a proposed rule, or have an interest in the rule, have little opportunity to review and comment on proposed staff revisions to a proposed rule before it becomes final. But the council has consistently valued and incorporated public participation in developing the CMP. Rather than satisfying only the minimum requirement for public notice and comment required by state law, the council on June 28 voted to publish the CMP, with proposed revisions, in the *Texas Register* (19 TexReg 5257). This additional step was taken to ensure the widest possible opportunity for meaningful public review and comment before the council adopts the CMP.

Accordingly, the comment summaries and responses are divided into two parts. "Part A" contains comment summaries and responses relating to the comments received during the 60-day comment period following the publication of the interim draft of Chapter 506 in the July 5, 1994, issue of the *Texas Register* (19 TexReg 5257). "Part B" contains comments received during the original comment period following the publication of Chapter 506, in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1932).

General comments were received regarding the "CMP Document," which was the subject of the "Notice of Availability" in the March 18, 1994, issue of the *Texas Register*. The CMP Document contains descriptions of the enforceable and nonenforceable portions of the CMP. The enforceable portions of the CMP are Chapters 501, 504, 505, and 506 which respectively contain: the CMP goals and policies; special area management planning; council procedures for state and local consistency with CMP goals and policies; and council procedures for federal consistency with the CMP goals and policies. In addition to reflecting the council's balanced approach to the protection of the ecological and economic values of CNRAs, the CMP Document is prepared pursuant to the Texas Natural Resources Code, Chapter 33, Subchapter C, §33.052, and is intended to satisfy the federal requirements for approval under the Coastal Zone Management Act (CZMA), 16 United States Code Annotated, §1455(d). While portions of the CMP Document describe the provisions of Chapters 501, 504, 505, and 506, the chapters, not the CMP Document, are the council's enforceable policies; the chapter preambles, not the CMP Document, may be used to determine the intent of the chapters. Based on comments received, the CMP Document was reviewed and revised to ensure consistency and resolve any perceived inconsistency with the chapters. To the extent that any conflicts are perceived when reviewing the CMP Document and the chapters, or while implementing the chapters, the chapters prevail.

Editorial changes that do not alter the content of this chapter have been made to clarify meaning and to correct grammatical errors. To save space, similar comments and responses have been combined by section. General comments on the proposed chapter and comments on the preamble to the proposed chapter are combined at the end of the summary of comments.

Certain sections were revised based on comments received on the CMP proposed rules published in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1895), and subsequently revised based on comments received on the interim draft of the CMP rules, published in the July 5, 1994, issue of the *Texas Register* (19 TexReg 5195). Paragraphs in "Part A" of this preamble which discuss such subsequent changes are *italicized* for the reader's convenience.

Part A.

Section 506.12.

One commenter requested that the list of federal actions in §506.12 be narrowed to identify only those federal actions which may be subject to the CMP goals and policies under Chapter 501 of this title (relating to Coastal Management Program). Section 506.12 identifies the federal actions which may adversely affect CNRAs and therefore may be subject to the policies established in Chapter 501 of this title (relating to Coastal Management Program). All federal actions identified in §506.12 must comply with CMP goals and policies to the extent those actions are governed by the policies. No change was made based on this comment.

One commenter recommended amending §506.12(a)(1)(C) to add United States Army Corps of Engineers (COE) projects under 33 United States Code Annotated, §426i and §426j. Pursuant to 33 United States Code Annotated, §426i, the COE approves projects for the prevention or mitigation of damages to shore areas attributable to federal navigation projects. Pursuant to 33 United States Code Annotated, §426j, the COE approves projects for the placement on state beaches of beach-quality sand dredged from federal navigation projects. Since these federal projects may adversely affect CNRAs, it is appropriate to ensure that such projects comply with CMP goals and policies. Section 506.12(a)(1)(C) has been amended as suggested by the commenter.

One commenter recommended amending §506.12(a)(1)(F) by adding "that adversely affect CNRAs" after "development projects." The recommended change would render §506.12(a) redundant because it lists federal actions within the CMP boundary that "may adversely affect" CNRAs. No change was made based on this comment.

Regarding §506.12(a), a commenter expressed concern that the rules establish an overlapping consistency review process for actions that are subject to both state and federal permits. A second commenter recommended that §506.12(a)(2)(A)(i) be revised to exempt federal permit consistency review of a National Pollution Discharge Elimination System (NPDES) permit where a state permit

has been reviewed for consistency or where a state permit for the same activity is below a threshold established to limit council review. It is not the council's intent to subject permit applicants to dual (state and federal) consistency reviews for equivalent actions. Therefore, pursuant to this and other comments, §506.12(c) and (d) have been revised to address the issue of state and federal consistency review of the same activity.

One commenter recommended deletion of §506.12(a)(3)(B) and (b)(4)(B) because the COE provides no "federal assistance" as defined in §506.11. The commenter stated that the COE does not provide grants, loans, subsidies, or any other form of financial assistance to state and local governments for water resource projects. A second commenter recommended deletion of §506.12(a)(3)(A)-(C) because the rules subject federal funding decisions to consistency review even though permits issued for the funded projects will also be subject to review. The §506.11 definition of "federal assistance" requires some form of "financial aid" to be provided. Since no financial aid is provided by the COE, no federal assistance is provided and §506.12(a)(3) (B) and (b)(4)(B) are rendered inapplicable. However, financial aid for the listed projects in §506.12(a)(3)(A) and (C), and therefore, federal assistance, is provided by the United States Environmental Protection Agency and Department of Transportation. Additionally, under certain circumstances these projects may not require additional permits after funding. Under this scenario, the federal project consistency review of the funding decision may be the only opportunity for the council to ensure consistency with CMP goals and policies. Based on this and other comments, §506.12(a)(3)(B) and (b)(4) (B) have been deleted.

One commenter stated that §506.12(b) is "not strictly compatible" with the COE environmental policy guidance. According to the commenter, for federal actions beyond the three mile limit, or otherwise outside the geographic boundaries of the coastal zone, federal compliance with the CMP is "voluntary." Additionally, the commenter "reserves its legal rights regarding any case where a state unreasonably asserts" that ocean disposal of dredged material outside the geographic boundaries of the coastal zone would be inconsistent with the state's CMP. The commenter made no requests for amendment to the proposed rule and no changes were made based on this comment.

One commenter requested that state thresholds be applied to consistency review of federal actions. The council recognizes that many activities are governed by parallel state and federal regulations, permits and authorizations. The CMP is designed to compile existing law into a uniform and consistent program. Therefore, §506.12(c) and (d) have been modified so that CMP procedures for review are consistently applied to both state and federal actions. Unlike Chapter 505 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies), Chapter 506 does not provide for thresholds. An activity which falls below approved state thresholds for referral is less likely to be reviewed by the

council. However, the same activity, conducted pursuant to a federal permit, license or authorization could be reviewable under Chapter 506. To provide uniform review processes and further effectuate the council's intent to limit review to significant actions affecting CNRAs, §506.12(c) and (d) have been rewritten to apply Chapter 505 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies) procedures when an activity requires equivalent federal and state permits or licenses.

One commenter requested clarification of §506.12(d), which provides the procedure and schedule for applicants to request that the council designate either the state or federal permit, but not both, as subject to consistency review when equivalent state and federal permits are required. The schedule by which state and federal agencies consider permit applications and decide whether to issue permits varies; therefore, a uniform schedule for council designation of "the consistency permit" would not easily mesh with the existing processes of the state and federal agencies. However, pursuant to another comment, §506.12(d) has been revised to address the issue of state and federal consistency review of the same activity. No further change was made based on this comment.

One commenter recommended amending §506.13(a) and (d) and adding new subsection (e). No §506.13 exists in Chapter 506, as proposed or as revised. No change could be made based on this comment.

Section 506.20.

Concerning §506.20, one commenter suggested that "generic" actions or projects should receive a CMP consistency determination to simplify permitting. Chapter 506 includes mechanisms to coordinate, streamline, and provide uniformity for agency actions and permitting processes. The Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.32, requires federal agencies to comply with a state's federally approved coastal management program and to prepare consistency determinations. Pursuant to §506.28 and §506.35, the council can determine that a category of actions is consistent, thus eliminating permit-by-permit consideration. No change was made based on this comment.

Section 506.24.

One commenter recommended that §506.24 be amended to require that federal consistency determinations comply with the provisions of 33 United States Code Annotated, §426i and §426j, relating to the COE beach mitigation projects, as this would allow federal funds to be spent on Texas projects. Section 506.24 is derived from the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.38. Upon federal approval of the CMP, Texas will be eligible to receive federal funds for implementation of the program and for coastal projects. Since the present rule already achieves the commenter's goal, no change was made based on this comment.

Section 506.25.

One commenter requested that §§506.25, 506.28, 506.32, and 506.41 be revised to

provide notice in newspapers of each county affected by the matter under review, similar to the notice provisions in the Texas Natural Resources Code, §33.204(c). Although notice of the sort requested by this commenter is not provided, the public will have more than adequate notice and opportunity to participate in the process. Sections 506.25, 506.32, and 506.41 require that public notice be provided in the *Texas Register*. In addition, the chairman may extend the public comment period or schedule a public hearing. The CMP also provides for public input during the general consistency agreement process, pursuant to §506.11 and §506.28. Therefore, no change was made based on these comments.

Sections 506.27.

Regarding the establishment of procedures for federal agencies to submit additional information when the council disagrees with a consistency determination on the grounds of insufficient information, one commenter recommended amending §§506.27(d)(3), 506.34(d)(3), 506.43(d)(3), and 506.52(c)(3), by adding the following: "and (ii) at such time as the information requested is received, the council shall consider such information in the manner described under this section." The council derives its authority from the Texas Natural Resources Code, Chapter 33, Subchapters C and F. If the council disagrees with a federal consistency determination on the basis of failure to submit sufficient information, the federal agency may submit the requested information and may request that the council reconsider its decision. The additional procedural requirements requested by this commenter are unnecessary. No change was made based on this comment.

Section 506.30.

Regarding §506.30(b), one commenter stated that the requirement that information be submitted to the council is "unreasonable." The commenter suggested that only an administratively complete NPDES permit application should be required. An administratively complete NPDES application would not contain any information about the permit's consistency with CMP goals and policies. The information requested in §506.30 is necessary to determine if a listed action will adversely affect CNRAs and to ensure consistency with CMP goals and policies. The proponent of the project is best able to provide this information. No change was made based on this comment.

Section 506.33.

One commenter requested that the council exempt federal licenses and permits which receive preliminary consistency approval from possible referral to the council pursuant to §506.33. Preliminary consistency review only applies to state and local actions pursuant to §505.11(a) of this title (relating to Actions and Rules Subject to the Coastal Management Program) and §505.31(a) of this title (relating to Preliminary Review of Individual Agency Actions by the Coastal Coordination Council). Federal law dictates the procedures for state review of federal actions. A federal action must be identified in §506.12(a) or (b) and must adversely affect a CNRA before it can be referred to the council.

The council, through procedures in §506.26 and §506.35, limits the number of federal action reviews. No change was necessary based on this comment.

One commenter recommended revising §506.33(a) and §506.42(a) by adding "listed under §506.12 that exceeds the applicable threshold and" after "permit" to provide the public notice of which federal activities are subject to consistency review. Since the only federal actions potentially subject to consistency review are already fully identified in §506.12(a) or §506.12(b), no change was made based on this comment.

Three commenters objected to the chairman's authority to refer items for review pursuant to §§506.26(a), 506.33(a), 506.42(a), and 506.51(a). One of the commenters recommended an amendment to require a vote of three committee members to review these federal activities. The commenter stated that he understood that this would require a legislative change. The second commenter asked that §§506.26(a), 506.33(a), 506.42(a), and 506.51(a) be revised to provide that three council members or the chairman may refer a federal activity or development project for full council review. The third commenter stated that §§506.33(a), 506.42(a), and 506.51(a) should be revised to require council review of federal activities or development projects upon referral by anyone, rather than limiting this authority to the chairman. The council derives its authority from the Texas Natural Resources Code, Chapter 33, Subchapters C and F. The Texas Natural Resources Code, §33.206(d), provides for council review of federal actions submitted by the chairman. The statute provides that only the chairman may refer a federal action to the council for review. No changes were made based on these comments.

One commenter questioned whether §506.33(a) requires review of individual requests for authorization under COE nationwide permits. The commenter also asked whether current Regional General Permits and Nationwide General Permits will be reviewed before they are considered for modification or extension. The commenter stated that there is no mechanism for individual review under nationwide permits since most actions do not require advance notification by the permittee. A second commenter recommended that §506.33(c) be revised to exempt from council review Nationwide General and Regional General COE §404 permits, and similar routine federal actions. The first commenter's basic understanding relating to individual review of nationwide permits is correct. The council does not intend to review individual requests for authorization under future COE nationwide permits that are consistent with the CMP. Neither will current Regional General Permits and Nationwide General Permits be reviewed under the proposed CMP until those permits are considered for modification or extension. No changes were made based on these comments.

Section 506.34.

A commenter suggested that the 180 day schedule provided in §506.34(a) is too long

and is inconsistent with §506.32 and §506.33. The commenter recommended a 90 day schedule for new permits and a 180 day schedule for permit amendments or renewals if the Texas Administrative Procedure Act, Government Code, Title 10, Chapter 2001 (Texas APA), Subchapter C, §2001.054, applies or there is a comparable federal rule that applies. A second commenter, stated that the schedules in §506.33(e) and §506.34(a) may delay review of permit applications. This commenter recommended the development of a general concurrence to allow for prompt review of projects with minor impacts. This commenter also requested limiting deadline extensions. The schedules in §506.33 and §506.34 are derived from the Code of Federal Regulations, Title 15, Part 930, Subpart D, §930.63 and §930.64. The schedule in §506.33(d) is actually shorter than the schedule in the federal rules because it provides for a presumption of concurrence within 90 days, while the federal rules do not provide for such a presumption until after 180 days. The schedule relates back to the filing of the consistency certification, which must be filed at the same time the applicant files the application with the federal agency. Section 506.34 is not inconsistent with §506.32 and §506.33 because §506.34 provides the maximum time allowable for council review of a federal license or permit. Section 506.32 discusses publication of notice of the availability of the consistency certification. The 30 day time period in §506.32 ensures that the chairman will have adequate time to review public comments within the 90 day time period for referring such matters to the council. Section 506.33 provides that the chairman's failure to refer the permit or license within 90 days results in a conclusive presumption that the action is consistent. Section 506.33(c) allows the council at least 90 days to review the referral. The 180 day period in §506.34 presumes that the chairman and the council both have taken their full 90 days to refer and review the permit or license. Section 506.35 provides for council development of general concurrences. No changes were made based on these comments.

Sections 506.50-506.52.

One commenter recommended deleting the provisions of §§506.50-506.52, relating to review of federal assistance projects. The commenter stated that in all situations of concern, the project will be covered by at least one state or federal permit. In the alternative, this commenter recommended that pursuant to the Code of Federal Regulations, Title 15, Part 930, Subpart F, §930.95(a), §506.51(a) should be amended to limit consistency review of applications for federal assistance to those listed in §506.12(a)(3). Under certain circumstances, these projects may not require additional permits. The federal project consistency review of federal assistance decisions may be the council's only opportunity to ensure consistency with CMP goals and policies. Therefore, to further effectuate the council's intent to protect the ecological and economic vitality of CNRAs, no change was made based on this comment.

General Comments.

A commenter recommended that Chapter 506 should set thresholds for federal actions similar to the thresholds for state actions discussed in Chapter 505 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies). This commenter recommended that the council direct the GLO staff to propose, within 90 days of final adoption of the CMP rules, thresholds for all federal actions for which there are no parallel state actions. State agencies may establish thresholds for referral of their actions to the council. As a product of state law, thresholds are inappropriate in the federal consistency process. However, general consistency agreements and general concurrences (pursuant to §506.22 and §506.35, respectively) may be used to limit council review of individual federal agency actions. Further, to provide uniform review processes and further effectuate the council's intent to limit review to significant actions affecting CNRAs, §506.12(c) and (d) have been rewritten to apply Chapter 505 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies) procedures when an activity requires equivalent federal and state permits or licenses. No additional change was made based on this comment.

One commenter expressed concern about the lack of local participation in federal activities, and stated that the council was heavily weighted with Austin bureaucrats. The Texas legislature established the council's composition. Pursuant to the Texas Natural Resources Code, §33.203(2), the council consists of representatives of existing agencies, a local government elected official and a coastal citizen. In addition, a third local representative from the area in which the activity will occur will be added to the council for all reviews under the Texas Natural Resources Code, §33.205. The council's composition fosters coordination among state agencies and balances the interests of agency officials and those of local governments and private citizens. Federal approval of the CMP will allow Texas citizens, through their representatives on the council, to review federal actions for consistency with the CMP goals and policies. No change was made based upon this comment.

One commenter was concerned that proposed procedures for referring consistency determinations are overly restrictive, cumbersome, confusing and difficult to enforce. The CMP is designed to limit council review to those activities which significantly and adversely affect a CNRA as listed in §505.11 and §505.60 of this title (relating to Actions and Rules Subject to the Coastal Management Program and Local Government Actions Subject to the Coastal Management Program), and §506.12. While the procedural requirements of Chapters 505 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies) and 506 may appear cumbersome, §505.34(e) of this title (relating to Referral of an Individual Agency Action to the Council for Consistency Review) and §505.66(e) of this title (relating to Referral of Local Government Actions to the Council for Consistency Review) provide that the council

has discretion to accept referrals that do not satisfy all ministerial requirements. The CMP is a consensus document which acknowledges agency and local government autonomy and seeks to minimize council review by enhancing review opportunities at the local level. The council referral procedures are listed in §505.32 of this title (relating to Requirements for Referral of an Individual Agency Action) and §505.62 of this title (relating to Local Government Consistency Determinations). The CMP diminishes the potential for bureaucratic delay by allowing individuals and governmental entities to request a preliminary review of actions during the permitting process. Chapter 506 is based on existing federal law. The CMP is designed to utilize existing regulations whenever possible, thereby promoting uniformity in the application of the law. No changes were made based on this comment.

Part B.

Section 506.11.

Reference to, and the definition of, "coastal zone" has been deleted from Chapter 506. A definition of "coastal area" has been added in §506.11, which follows the definition in the Texas Natural Resources Code, §33.004(5). The reference to "coastal zone" in §506.12(a) has been replaced with "CMP boundary," as these terms cover the same geographic area. The difference between the geographic areas covered under the definitions of "coastal area" and "CMP boundary" is that the former includes the entire area within the coastal counties, while the latter specifically excludes federal lands located within the coastal counties.

Regarding the definition of "second-tier counties," as provided in §506.11, one commenter stated that Polk and San Jacinto counties should not be classified as second-tier counties, and asked whether the official list of second-tier counties is the list provided in the CMP document or the list in §506.11. Section 506.12(b) was amended by deleting the activities occurring in second-tier counties from the list of federal actions. (See the discussion of this revision in the response to comments on §506.12(b).) Therefore, the definition of "second-tier counties" in §506.11 has been deleted.

One commenter supported the definition of "interagency coordination group" in §506.11. No change was made based on this comment.

One commenter was opposed to the definition of "consistent to the maximum extent practicable," as provided in §506.11, and stated that federal agencies are required to comply completely, as opposed to the "maximum extent practicable." The definition of this phrase is based on the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.32. Federal activities, including federal development projects, are required to be consistent with the CMP to the "maximum extent practicable." No change was made based on this comment.

Section 506.12.

One commenter requested that §506.12 be amended to include only those federal ac-

tions which may be subject to the CMP policies in Chapter 501 of this title (relating to Coastal Management Program). Section 506.12 identifies the federal actions which may adversely affect CNRAs; all of the federal actions listed in §506.12 may implicate the policies established in Chapter 501 of this title (relating to Coastal Management Program). Therefore, all federal actions identified in §506.12 must comply with the CMP goals and policies. No change was made based on this comment.

Many comments were received regarding the list of federal actions in §506.12. Seven commenters recommended various mechanisms for limiting the list; two requested that the list be expanded. One commenter expressed general support for the list, and requested that the council not limit its review authority any further because important issues must reach the council to resolve policy. Another commenter also stated that it is often difficult to obtain federal compliance for actions not specifically listed, and recommended that the list of actions be as inclusive as possible, noting that seeking review of unlisted federal actions has often proven bureaucratic and time consuming. The Code of Federal Regulations, Title 15, Part 930, requires federal agencies to comply with a state's federally approved coastal management program and prepare consistency determinations on actions affecting CNRAs, regardless of whether their actions have been listed by the state. Therefore, the list of federal actions in §506.12 remains open-ended. However, the council will continue working with the federal agencies to identify actions for which a general concurrence or general agreement may be appropriate, thereby narrowing the number of individual federal actions subject to council review. The list of federal actions was developed with the aid and support of the federal agencies participating in a Federal Agency Task Force (FATF), created to aid in the CMP development process. The FATF did not indicate that the list was too broad. However, §506.12(b) was revised to include only those actions occurring within outer continental shelf (OCS) waters or on excluded federal land within the coastal area. The revisions were made to eliminate any duplication of activities on the state list of actions in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) and the federal actions listed in §506.12(b). Based on these comments, subsection (b) has been amended by deleting §506.12(b)(1)(A)(i)-(iv), and combining §506.12(b)(1) and (b)(1)(B). Section 506.12(b)(2)(D) and (D)(i) have also been combined. Section 506.12(b)(2)(D)(ii) and (iii) and (E)(i)-(iii) have been deleted. The list of actions within the CMP boundary remains as proposed.

One commenter stated that the CMP does not adequately address activities in coastal hazard areas. In response to this comment, §506.12(a)(1)(D) has been amended to include under the actions of the Federal Emergency Management Agency the approval or suspension of community eligibility to sell flood insurance.

Three commenters supported changes to earlier, informal draft versions of Chapter

506, reflected in §506.12(c) and (d), which eliminate duplication of the potential for council consistency reviews on National Pollution Discharge Elimination System (NPDES) permits (33 United States Code Annotated, §1342) and similar federal/state permits. No change was made based on this comment.

One commenter stated that the terms "minor" and "small," as used in §506.12(a)(1)(A) and (C)(i) and (ii), are unclear. The terms "small" and "minor" are statutory terms defined in the federal statutes cited in §506.12(a)(1)(A) and (C)(i) and (ii). No change was made based on this comment.

One commenter requested that §506.12(a)(1)(F) be amended to mention excluded federal lands, even as a cross reference. Section 506.12(a) lists the federal activities, development projects, licenses, and permits within the CMP boundary that may adversely affect CNRAs. The CMP boundary, as defined in §503.1 of this title (relating to Coastal Management Program Boundary), specifically excludes federal lands. Therefore, this subparagraph does not include any federal actions located on federal lands. However, §506.12(b)(1) includes federal activities on federal lands. No change was made based on this comment.

Two commenters stated that §506.12(a)(2)(A)(v), identifying the Environmental Protection Agency's (EPA's) pesticide registration requirements as a federal action included within the CMP, impacted the practices of the agriculture industry which had not been properly addressed in the CMP. Because the registration of pesticides is not site specific (e.g., the registration applies throughout Texas, regardless of the application site(s)), and any adverse effects resulting from pesticide application is covered by §501.14(g) of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas), §506.12(a)(2)(A)(v) has been deleted.

One commenter requested deletion of §506.12(a)(2)(F), which identifies certain Nuclear Regulatory Commission (NRC) licenses as federal actions which may adversely affect CNRAs, because the council has not adopted enforceable policies applicable to such actions. There is no CMP policy which specifically pertains to such NRC actions; however, those actions will have to be undertaken in compliance with the CMP goals and policies which are applicable (e.g., a NRC license issued for an activity located in a critical area must be consistent with the critical areas policy, provided in §501.14(h) of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas)). No change was made based on this comment.

One commenter asked whether all Texas Department of Transportation projects receiving federal funding will be subject to the consistency review process. Pursuant to §506.12(a)(3)(C), only federally funded highway projects requiring preparation of an environmental impact statement (EIS) or an environmental assessment (EA), pursuant to the National Environmental Policy Act (NEPA), 42 United States Code Annotated, §§4321-4370d, will be subject to consistency review. No change was made based on this comment.

One commenter requested that §506.12(b), relating to federal actions included in the CMP, be amended to distinguish federal actions occurring in the second-tier counties from federal actions occurring in OCS waters. Section 506.12(b) has been amended to include only those federal actions within OCS waters or on excluded federal lands within the coastal area. Therefore, the commenter's requested revision was not included.

One commenter requested identification of impacts to farms and ranches resulting from §506.12(b)(1) and (2), which identifies the federal activities, development projects, licenses and permits occurring outside the CMP boundary which are included in the CMP. Because §506.12(b) does not list any activities landward of the CMP boundary, farms and ranches should not be impacted by the provisions in §506.12(b)(1) and (2). No change was made in response to this comment.

One commenter stated that §506.12(b)(1)(B), which provides that activities occurring "within federal lands excluded from the CMP boundary but which affect coastal natural resource areas" are included in the CMP, appears to include all federal lands located in Texas, and recommended that §506.12(b)(1)(B) should be limited to the CMP area. Pursuant to revisions of §506.12(b), the council has limited its jurisdiction over federal actions occurring outside the CMP boundary to federal actions occurring within OCS waters or on excluded federal land located within the coastal area. The coastal area is comprised of those counties included in the CMP boundary. Federal lands within the coastal area are expressly excluded from the boundaries of the CMP. However, federal law specifically authorizes the inclusion of federal actions occurring outside the CMP boundary. The CZMA, 16 United States Code Annotated, §1456(c)(1)(A), provides that each "federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable" with the enforceable CMP goals and policies. In addition, CZMA, 16 United States Code Annotated §1456(c)(1)(C), requires federal agencies to prepare consistency determinations for federal activities occurring on federal lands outside the coastal area that affect CNRAs.

Concerning §506.12(c), five commenters stated that the Texas Natural Resource Conservation Commission (TNRCC) wastewater discharge permit thresholds should apply to EPA NPDES permits to ensure that EPA and TNRCC permits authorizing the same actions are subject to the same procedural limitations for council consistency review. A commenter asked how the council would handle review of NPDES permits. Another commenter requested specific thresholds for industrial and municipal discharges (excluding stormwater discharges), and yet another commenter recommended that the council waive its jurisdiction over all NPDES permits. Regarding the first comment, §506.12(c) provides that federal consistency certification requirements are waived for those NPDES permits authorizing discharges requiring equivalent TNRCC permits. Regarding the second comment, it is

within the TNRCC's discretion to adopt appropriate thresholds for consistency review; therefore, any suggestions regarding specific thresholds should be directly addressed to the TNRCC. Section 506.12(c) has not been amended to exclude all NPDES permits from the federal consistency certification requirements because such permits authorize discharges which may adversely affect CNRAs, and are therefore properly included in the CMP, pursuant to the Texas Natural Resources Code, §33.205(a). No changes were made based on these comments.

One commenter requested that §506.12(d) be amended to waive the council's jurisdiction to review federal actions below thresholds approved for equivalent state agency actions. Pursuant to §505.26 of this title (relating to Council Review and Approval of Thresholds for Referral), state agencies are authorized to adopt thresholds which, after council approval, will limit the actions below the threshold that may be referred to the council for consistency review, as provided in §505.32 of this title (relating to Requirements for Referral of an Individual Agency Action). Thresholds must be adopted by state agencies and approved by the council; therefore, it would be inappropriate to allow state thresholds to limit the council's ability to refer and review federal agency actions. However, general consistency agreements and general concurrences, respectively provided in §506.28 and §506.35, may be used to limit the council's ability to refer and review individual federal agency actions. No change was made based on these comments.

One commenter requested clarification of §506.12(d), which provides the procedure for applicants to request that the council designate either the state or the federal permit, but not both, as potentially subject to consistency review when equivalent state and federal permits are required. The commenter recommended that §506.12(d) be amended to include a schedule for council designation of either the federal or state permit as "the consistency permit" to avoid undue delay in the permitting process. The schedule by which state and federal agencies consider permit applications and decide whether to issue permits varies; therefore, a uniform schedule for council designation of "the consistency permit" would not easily mesh with the existing processes of the state and federal agencies. However, the council may issue general direction on the process, as provided in §506.12(d). No change was made based on this comment.

Section 506.20.

One commenter stated that consistency of federal actions should not be contingent on "adequate consideration" of CMP policies which are in the nature of recommendations, and requested that the language to that effect be deleted from §§506.20(2), 506.30(b)(5) and 506.40(b)(4). Most of the provisions in Chapter 506 are based on the federal regulations governing federal agency compliance with federally approved coastal management programs; the language to which this commenter refers is based on the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.39(c). Deleting this lan-

guage, as suggested by the commenter, would not affect federal agencies' obligation to adequately consider the CMP's non-enforceable policies. Retaining the language provides more effective public notice of the federal requirements with which federal agencies must comply; therefore, this paragraph has not been deleted.

Section 506.21.

One commenter recommended that §506.21(a) be amended to provide for a finding of no adverse effect instead of a "negative determination" to avoid confusing the concepts of adverse effects on CNRAs and consistency with the CMP goals and policies. The commenter noted that §505.30(a)(2) of this title (relating to Agency Consistency Determination) does not require a consistency determination if the pertinent state agency determines that an activity will not adversely affect a CNRA. The federal agency negative determination required by §506.21(a) essentially has the same substantive effect as the state agency finding of no adverse effects on CNRAs required by §505.30(a)(2) of this title (relating to Agency Consistency Determination). The terminology differs because §506.21(a) is based on the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.35(d), which uses the phrase "negative determination." No change was made based on this comment.

One commenter recommended that §506.21 be amended to clarify that it applies to all federal actions, not just federal activities or development projects. The Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.35(d) provides that federal agencies may submit negative determinations for federal "activities" (to states with federally approved coastal management programs). The Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.31(c), provides that a federal activity "does not include the issuance of a Federal license or permit to an applicant or person or the granting of Federal assistance to an applicant agency." Therefore, no change was made to this section based on this comment.

Section 506.22.

One commenter questioned the basis for general consistency determinations under §506.22. General consistency determinations are authorized by the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.37(b), which provides that such determinations "may only be used in situations where the incremental actions are repetitive or periodic, substantially similar in nature, and do not directly affect the coastal zone when performed separately." Provided that these requirements are met, federal agencies may issue a general consistency determination. It is anticipated that federal agencies will utilize the general consistency determination option to avoid case-by-case consistency review of minor actions. No change was made based on this comment.

One commenter requested that §506.22(b) be revised to require that federal agencies consult with the council at the council's request because "periodic" consultations (on incremental actions authorized pursuant to a

general consistency determination) are too open-ended. Section 506.22(b) reflects the requirement imposed by the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.37(b), which provides, "[i]f a Federal agency issues a general consistency determination, it must thereafter periodically consult with the State agency to discuss the manner in which the incremental actions are being undertaken." Therefore, no change was made based on this comment.

Section 506.23.

Regarding §506.23, one commenter stated that the experience of other states with phased consistency determinations has been "tricky," and that the process can be a slippery slope after issuance of a first approval because of the inevitable political and financial pressures that develop in support of a project. The commenter recommended that the council approach phased consistency conservatively, and use cautionary and conditional language with all early statements regarding determinations made under this section. The council will consider consistency determinations on development projects carefully. No change was made to this section based on this comment.

Concerning §506.23, one commenter stated that draft EISs that are not finalized prior to federal approval of the CMP are subject to the full consistency review process and expressed concern that the potential for consistency review would adversely impact the relocation of the United States Navy's Mine Warfare Center of Excellence in Corpus Christi, Texas. As provided in §506.24(b), consistency determinations are required for phased development projects described in §506.23(b). Phased development project decisions which were specifically described, considered, and approved prior to management program approval (e.g., in a final EIS issued pursuant to the NEPA) are specifically exempted from the consistency determination requirement, pursuant to the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.38(b). The commenter correctly noted that this exemption does not include draft EISs; however, the purpose of federal consistency review is to ensure greater coordination and cooperation between the federal agencies and the state to allow for the protection of CNRAs. The council will coordinate with the federal agencies prior to federal approval to ensure an efficient federal consistency review process. No change was made based on this comment.

Section 506.24.

One commenter supported §506.24(a), and suggested that it would be helpful to determine the number of projects where the pertinent federal agency retains discretion to reassess and modify an ongoing activity (and therefore require a federal consistency determination), in terms of the demands on staff subsequent to federal approval of the CMP. The council will rely on GLO staff to assess the number of ongoing activities requiring consistency determinations pursuant to §506.24(a). No change was made to this subsection based on this comment.

Regarding §506.24(c), nine commenters suggested a phased-in approach to maintenance dredging of commercially navigable channels. Two of the nine commenters stated that such projects should be phased in over a period of no less than five years. The other commenters suggested a three to five year phase-in period. The council will consider entering into an agreement with the COE to phase in council review of maintenance dredging activities. No change was made based on this comment.

Two commenters supported §506.24(c), relating to ongoing maintenance of commercially navigable channels, for projects initiated prior to CMP approval. One of the commenters suggested that §506.24(c) should be amended to clarify that "CMP approval" means approval by the United States Department of Commerce. Section 506.24(b) and (c) has been amended to clarify that "approval" refers to federal approval.

Section 506.25. One commenter requested identification of the state entity that will receive federal consistency determinations and certifications. The public notice provisions (§§506.25, 506.32 and 506.41), include a new subsection (d), which requires that, after the comment period closes, the chairman must issue a written decision to refer the matter to the council or not to refer the matter to the council. This new subsection also provides that upon issuance of the chairman's decision, the council secretary will immediately notify the council members, the applicant, the federal agency, and any other affected parties.

Four commenters recommended that Chapter 506 be amended to provide for public notice and comment in only one section, as opposed to three sections (§§506.25, 506.32, and 506.41). The rule has not been amended to consolidate the public notice and comment requirements in §§506.25, 506.32 and 506.41, because these sections apply to substantively different portions of the chapter.

Section 506.26.

Two commenters stated that the schedule for council review of federal activities, provided in §506.26, appeared excessive. Another commenter objected to the presumption of council agreement, as provided in §506.26(c). One commenter requested the deletion of the phrase "with all required information" from §§506.26, 506.33, and 506.42 to ensure that the council's review occurs within the specified deadlines. The information required in §§506.26, 506.33, and 506.42 is required pursuant to existing federal regulations and is necessary to determine if a listed action will adversely affect CNRA's and to ensure consistency with CMP goals and policies. The proponent of the project is best able to provide this information. The schedule for council response to federal consistency determinations and the presumption of agreement is provided in the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.34 and §930.35. No change was made to this section based on these comments.

Section 506.27.

Regarding §§506.27(b), 506.34(b), 506.43(b), and 506.52, one commenter recommended that the council establish hearings procedures for admitting evidence, providing opportunity for public comment, and standards of review. The commenter also questioned the effect of a council decision to disagree with a consistency determination, pursuant to §506.27. For review of federal and state actions, the council will develop procedures governing receipt of evidence, public participation, and general practice before the council. A council decision to disagree with a federal consistency determination does not prohibit the federal agency from proceeding with a proposed action. The CZMA, 16 United States Code Annotated, §1456, requires federal agencies to comply with the CMP to the maximum extent practicable; however it does not require federal agencies to cease all actions pursuant to a council decision to disagree. The council may, in cases of "serious disagreements," seek secretarial mediation as provided in §506.27(e) or may seek an injunction against the federal agency in court. No change was made based on this comment.

One commenter requested the addition of a definition of the term "assistant administrator," as used in §§506.27(c), 506.34(c), 506.43(b) and (c), and 506.52(b). Based on this comment, a definition of "assistant administrator" has been added to §506.11.

One commenter asked for clarification of the effect of council disagreement on the grounds of insufficient information to make a consistency determination, as provided in §§506.27(d)(3), 506.34(d)(3), 506.43(d)(3), and 506.52(c)(3), and asked whether the federal agency applicant may submit additional information and request a new hearing. As provided in §506.27(d)(3), the council may disagree with a federal agency's consistency determination if the council finds that the federal agency failed to submit sufficient information to support the determination. As previously discussed in response to a comment on §506.27(b), the effect of a council decision to disagree with a federal agency's consistency determination does not prevent the federal agency from proceeding with the action. If the council disagrees with a federal consistency determination on the basis of failure to submit sufficient information, the federal agency may submit the requested information and may request that the council reconsider its decision; however, in cases where the council objects to a consistency determination on the grounds of insufficient information, the federal agency is prohibited from issuing the federal license or permit or approving the application for federal assistance. No change was made based on this comment.

Section 506.28.

One commenter asked whether the interagency coordination group (ICG) referenced in §506.28(b) will be a standing committee included in the CMP organizational structure, or an ad hoc committee organized around specific development projects. The ICG, defined in §506.11, is anticipated to be an ad hoc committee established to facilitate review of particular projects. The membership

of the ICG will vary depending on the location of the project and other factors. No change was made based on this comment.

Regarding §506.28, one commenter supported the mechanisms to avoid duplicative consistency reviews of projects subject to an ICG comprehensive review. The commenter recommended revisions to subsection (b) of this section to include federal activities, as well as development projects. Section 506.28(a) describes the council's authority to issue general consistency agreements with respect to both federal activities and development projects. The general consistency agreement provisions in §506.28(b) govern federal development projects, but use of a similar process for federal activities is not precluded. No change was made based on this comment.

Section 506.30.

Five commenters stated that too much information is required in §506.30. Four commenters suggested that a copy of the federal license or permit application or OCS plan with a one-page description of the project and its location would suffice. The information requirements in §506.30(b)(2), (4), and (5), now §506.30(b)(1), (3), and (4), are based on the federal requirements provided in the Code of Federal Regulations, Title 15, Part 930, Subpart D, §930.58. Section 506.30(b)(3), now §506.30(b)(2), is designed to coordinate the review of all permits associated with one project. Based on these comments, §506.30(b)(1) has been deleted, and §506.30(b)(2), now §506.30(b)(1), has been amended to provide that applicants may submit the federal application and supporting materials to meet the requirements for information in §506.30(b)(2), now §506.30(b)(1).

One commenter stated that applicants should be required to identify and address each specific relevant policy in the consistency certification to avoid a generalized statement or the submission of a general EA. Applicants must identify all relevant policies in the findings required under §506.30(b) (5), now §506.30(b)(4), and the findings should be supported in the consistency certification. Failure to fully analyze applicable policies may impede council consideration or, if information is insufficient, result in a council objection to a consistency certification. No change has been made to this paragraph based on this comment.

Regarding §506.30, one commenter requested a definition of an administratively complete consistency certification. Another commenter requested that the federal consistency review process be revised to incorporate the language regarding administrative completeness, as provided in §504.2(c) of this title (relating to Nomination of a Geographic Area of Particular Concern). Section 506.30(b) establishes the information requirements for an administratively complete consistency certification. In addition, §506.30(d) provides that if the council has not informed the applicant of the need for additional information within 15 days of receipt of the consistency certification, then the consistency certification is considered administratively complete. Thus, a consistency certification is

considered administratively complete 15 days after the date of receipt by the council secretary, unless the council notifies the applicant of the need for additional information within the 15-day period. No change was made based on this comment.

Regarding §506.30(c), one commenter asked how state and federal permits required for the same activity will be consolidated for purposes of consistency review. Two commenters requested that §506.30(c) be amended to allow a single review for projects requiring multiple federal or state actions. To facilitate and streamline council review, §506.30(c) requires that, to the extent practicable, applicants provide the council with consistency certifications on all federal permits associated with a project at the same time. Pursuant to §506.30(b)(3), applicants are required to provide a list of any federal, state, and local permits (subject to the CMP) which are associated with an action that received a consistency certification. Section 506.30(c) establishes a general process to allow for some flexibility. The council will publish a "manual of operations" detailing each step of the consistency review process, and the council will refine the manual as its experience with the process increases. Consequently, no changes were made in this subsection.

One commenter supported the language of §506.30(b)(5), now §506.30(b)(4) which provides that advisory policies are to be adequately considered and requested the addition of stronger language, such as "fully" or "strongly" considered. Section 506.30(b)(5), now §506.30(b)(4), is identical to the federal provisions in the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.58(a)(4). No change was made based on this comment.

Section 506.32.

One commenter requested deletion of the provision allowing an extension of the public comment period in §506.32(c), and stated that the extension was unnecessary. Generally, the public comment period provided pursuant to §506.32(c) will be no more than 30 days. An extended comment period may be appropriate for large projects involving several federal permits. Therefore, no change has been made to this subsection based on this comment.

Section 506.33.

Nine commenters objected to the length of the schedule for consistency review of federal licenses and permits and OCS plans, and recommended reducing the schedule by one-half. One commenter stated that the schedule should be shortened for minor federal actions, such as nationwide 404 permits issued pursuant to the federal Clean Water Act, 33 United States Code Annotated, §1344. Section 506.33(e) and §506.42(e) provide for the conclusive presumption of the council's concurrence with consistency certifications for federal licenses and permits, if the license or permit has not been referred to the council within 90 days of submission of the consistency certification to the council secretary. Section 506.34(a) and §506.43(a) require the council to concur with or object to a consis-

tency certification within 180 days of submission of the consistency certification to the council secretary. These schedules were not changed for the following reasons. First, these schedules are established in the Code of Federal Regulations, Title 15, Part 930. Second, the schedule relates back to the filing of the consistency certification, which must be filed at the same time the applicant files the application with the federal agency. Finally, shortening the schedule may result in the referral of more federal actions than would otherwise be the case, because there would be less time for the applicant to resolve any differences with the council. Therefore, no change was made based on these comments.

One commenter requested amendments to §§506.33, 506.34, 506.42 and 506.43, which would limit the council's review to the applicant's consistency certification, excluding review of the federal license or permit. Section 506.34 and §506.43 have been amended to clarify that it is the applicant's consistency certification that is the subject matter of the council's objection or concurrence. However, §506.33 and §506.42 were not amended. These sections continue to reference federal licenses and permits, because the actions the council will refer include federal licenses and permits, listed in §506.12(a)(2) and (b)(2).

One commenter stated that §506.33(a) appears to allow the chairman to initiate council review of any federal license or permit, whether or not the project is located seaward of the CMP boundary, and recommended that council review be limited to federal licenses and permits for projects located seaward of the boundary. To be eligible for referral to the council, a federal action must be identified in §506.12(a) or (b), and must adversely affect a CNRA. No change was made based on this comment.

Section 506.35.

A commenter stated that one way to address inconsistency between state and federal consistency requirements is to develop "general concurrences." The commenter recommended that the GLO identify the federal activities and permits for projects eligible for general concurrences in the council's final rules. The commenter further stated that general concurrences should be used to adopt "federal thresholds" identical to state thresholds. Section 506.35 provides for council development of general concurrences, which may be used to exempt a class of minor actions from the requirements that applicants prepare consistency certifications and from the procedures for council review of individual consistency certifications, in accordance with the Code of Federal Regulations, Title 15, Part 930, Subpart D, §930.53(c). The GLO will identify those actions suitable for general concurrences and submit recommendations regarding those actions to the council. No change has been made based on this comment.

Regarding §506.35, one commenter asked whether general concurrences provide an opportunity to develop a Memorandum of Agreement (MOA), or if they are only appropriate for a certain level of activities. A general concurrence is only appropriate for a

class of actions having relatively minor impacts on CNRAs. A general concurrence is similar to a general permit, and will include an identification of actions covered and the conditions that must be met when performing such actions. Persons filing applications for actions covered by a general concurrence will not have to submit consistency certifications to the council. No change has been made based on this comment.

A commenter stated that tailoring general concurrences around geographic areas is a sound idea that reflects some of the latest thinking about integrated ecosystem management. Identifying the geographic area subject to the general concurrence, issued pursuant to §506.35, may be appropriate on a case-by-case basis; however, no change has been made based on this comment.

Section 506.40.

One commenter recommended that §506.40 be amended to require applicants to provide consistency certifications to the secretary of the interior, as opposed to the council secretary, and rely on the secretary of the interior to forward a copy of the certification to the council. The CZMA, 16 United States Code Annotated, §1456(c)(3)(A) and (B), requires applicants to attach consistency certifications for all licenses and permits described in detail in plans submitted to the secretary of the interior. However, the CZMA, 16 United States Code Annotated, §1456(c)(3)(A), requires all applicants for federal licenses and permits to submit consistency certifications to the council. Routing consistency certifications through the secretary of the interior to the council is contrary to federal law and might unnecessarily delay council consideration. Therefore, no change was made based on this comment.

Section 506.41.

One commenter recommended that §506.41 be amended to require that the "applicant" provide public notice of consistency certifications on OCS plans. To ensure uniform public notice, the council will publish notice of consistency certifications. No change has been made based on this comment.

Section 506.42.

Concerning §506.42(c), one commenter stated that confusion may result from the requirement that the council secretary shall place the action on the agenda of the earliest council meeting at which consideration of the action is "reasonably practicable," and recommended that the subsection be amended to provide a minimum time limit or standardized schedule. The second sentence of §506.42(c) provides that if no regularly scheduled meeting will allow the council to consider the action within 90 days, the chairman shall schedule a special meeting to consider the action. This provision clarifies that "reasonably practicable" means no later than 90 days after receipt of the consistency certification. Therefore, no change has been made based on this comment.

Section 506.50.

Regarding §506.50, one commenter questioned the need for council review of applica-

tions for federal assistance because, in virtually all situations, the project will require at least one state or federal permit. The commenter stated that consistency issues should not be raised in the context of funding. Consistency review of federal assistance to state and local governments is required by the Code of Federal Regulations, Title 15, Part 930, Subpart F. Throughout the CMP development process, many people expressed a preference for early resolution of consistency issues. The review of federal assistance projects involves the council at the earliest stages of project development, prior to commitment of significant resources to the project. No change has been made to this section based on this comment.

Concerning §506.50, one commenter requested a definition of "the state single point of contact for the Texas Review and Comment System." Section 506.11 has been amended to include a definition of "state single point of contact," as suggested by this commenter.

General Comments.

One commenter stated that the optimum regulatory structure for a CZMA program would provide the TNRCC with authority over all federal consistency matters, and suggested that the GLO be designated to represent the council as a statutory party at any permitting agency upon a majority vote of the council. The Texas Natural Resources Code, §33.206(d), provides that the council shall review federal actions for consistency with the CMP goals and policies. Using separate entities to conduct federal and state consistency review may result in different application and/or interpretation of the CMP goals and policies. No change was made based on this comment.

A commenter supported the language on federal consistency. No change was made based on this comment.

One commenter questioned whether the United States Navy's regulations are eligible for rule consistency certification, as are state agency rules, pursuant to §505.20 of this title (relating to Council Review and Certification of Existing Agency Rules). The Code of Federal Regulations, Title 15, Part 930, upon which Chapter 506 is based, does not provide for rule certification for federal agencies. No change was made based on this comment.

One commenter stated that consistency reviews will frustrate the state goal of coordinating and streamlining the environmental permitting process, and that the council's authority to review agency actions for consistency with the CMP is tantamount to another separate permitting process that may double regulatory lag, add considerably to development costs, and amplify opportunities for frivolous reviews. The consistency review process is not intended to be, nor is it, a separate permitting process. Moreover, the consistency review process includes mechanisms to coordinate and streamline permitting processes. The consistency review process will evolve to accomplish the long-term goals of coordinating and streamlining these processes. No change was made based on this comment.

One commenter disagreed with the conclusion that the CMP will have minimal fiscal impact. An additional cost/benefit analysis will be prepared prior to federal approval of the program. No change was made based on this comment.

One commenter stated that the efficient and continuous implementation of a federal consistency process for the CMP depends, in part, on institutionalizing the agreements and procedures with each federal agency. The commenter also stated that the spirit, intent, role, and importance of these procedures can be reinforced for existing and future agency staff via MOAs signed by each agency with the proper formality at the highest level. The GLO and the COE have discussed development of an MOA regarding federal consistency review of maintenance dredging activities. Other federal agencies have also expressed interest in developing MOAs to ensure an easier transition. The council will coordinate with federal agencies to develop MOAs. No change was made based on this comment.

A commenter recommended addition of a specific statement that the CMP will not delay processing or issuance of agency permits to municipalities. The council has worked diligently to ensure that the CMP does not unreasonably delay the processing or issuance of agency permits to any applicant. However, a statement promising no delay for a class of applicants is inappropriate and may not be true in isolated cases. Both the federal and state consistency review processes include deadlines for council action. If the council does not meet these deadlines, the council is prohibited from exercising its review authority. Therefore, no change was made based on this comment.

Five commenters requested that the votes of at least three council members be required to initiate council review of a federal action. Two other commenters stated that §§506.26(a), 506.33(a), and 506.51(a) should be revised to require council review of federal activities or development projects upon referral by any council member, rather than exclusively limiting this authority to the chairman. The Texas Natural Resources Code, §33.206(d), provides that the council shall review a federal action submitted to the council by the council chairman. The statute does not allow council members to submit a federal action to the council for review. No change was made based on these comments.

One commenter requested that the CMP provide specific means to review and veto COE projects, when necessary. Another commenter asked for clarification of the council's authority to prohibit federal actions after federal approval of the CMP. The CZMA does not provide for a state "veto" of federal agency actions (e.g., COE projects). Instead, the council will review federal development projects, when submitted by the chairman, and either agree or disagree with the federal agency's consistency determination. A council decision to disagree with a federal consistency determination does not prohibit the federal agency from proceeding with the development project. The council will coordinate with the COE and other federal agencies to

ensure that their actions comply with the CMP goals and policies to the maximum extent practicable. No change was made based on this comment.

A commenter requested that the council designate someone to address items such as "pre-consistency review" or to assist sponsors of local activities under the CMP. The staff of the GLO will be available to consult with local sponsors and to provide technical assistance on federal projects, as provided in the Texas Natural Resources Code, §33.204(d). No change was made based on this comment.

Three commenters requested that federal agencies be allowed to establish threshold levels for federal actions. Another commenter requested the establishment of the federal thresholds prior to rule adoption. State agencies and local governments may establish thresholds for referral of their actions to the council. As a product of state law, thresholds are inappropriate in the federal consistency process. However, general consistency agreements and general concurrences, respectively provided in §506.28 and §506.35, may be used to limit council review of individual federal agency actions. No change was made based on these comments.

A commenter stated that the federal consistency provisions do not parallel the state consistency provisions. The federal consistency process is necessarily different from the state consistency process, due to the requirements of the Code of Federal Regulations, Title 15, Part 930. No changes were made based on this comment.

One commenter stated that one good aspect of the CMP is the requirement that federal agencies must meet the state requirements for consistency. No change was made based on this comment.

One commenter stated that affected industries should be included in the consistency review process. The Coastal Coordination Act, Texas Natural Resources Code, Chapter 33, Subchapter F, establishes the council as the governmental body responsible for conducting state and federal consistency reviews. This chapter and Chapter 505 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies), governing council review of state agency and local government actions, provide for public participation in the review process. No change was made based on this comment.

One commenter stated that the language contained in the preamble to proposed Chapter 506 limits national security considerations to national emergencies. The preamble to proposed Chapter 506 does not narrow scope of national security considerations. "National security" is identified in Chapter 10 of the CMP Document as "in the national interest," and §501.13 of this title (relating to Administrative Policies) requires state agencies to consider the national interest when making decisions. No change was made based on this comment.

A commenter supported the language in the preamble to proposed Chapter 506 regarding

the reasons why Texas is promulgating regulations on federal consistency. No change was made based on this comment.

One commenter stated that the phrase "state's rights," as used in the preamble to proposed Chapter 506, is an inflammatory statement that may polarize support for and/or opposition to the CMP. The commenter stated that characterizing federal consistency as an opportunity for coordination, cooperation, and partnerships may be more advantageous. The statement was not intended to polarize support for and/or opposition to the program. Rather, it was intended to recognize one of the prime benefits of federal approval, namely federal agency compliance with CMP policies. No change was made based on this comment.

Groups and associations in opposition because they requested changes in, or otherwise expressed dissatisfaction with, the chapter were: Champion International Corporation; Chevron U.S.A. Production Company; Exxon Chemical Company; Exxon Company, U.S.A.; Freese and Nichols, Inc.; Greater Houston Builders Association; Gulf Coast Waste Disposal Authority; Hoechst-Celanese Corporation; Hollywood Marine, Inc.; Houston Lighting and Power Company; Mitchell Energy and Development Corporation; Mobil Oil Corporation; Nueces County Economic Development Focus Group; Offshore Operators Committee; Pennzoil Company; Phillips Petroleum Company; Port of Brownsville; Real Estate and Economic Development Focus Group; Shell Western E&P, Inc.; Texaco, Inc.; Texas Chemical Council; Texas Department of Agriculture; Texas Ecologists; Texas Mid-Continent Oil and Gas Association (TMOGA); Texas Ports Association; Texas Railroad Commission; Texas and Southwestern Cattle Raisers Association; Texas Water Conservation Board; United States Department of the Army (Corps of Engineers); United States Department of Commerce (National Oceanic and Atmospheric Administration); United States Department of the Interior (Fish and Wildlife Service); United States Department of the Navy; Valero Refining Company.

Groups and associations expressing support for the chapter were: Galveston Bay Foundation.

The following groups and associations were neutral with regard to the adoption of this chapter: National Marine Fisheries Service (Habitat Conservation Division).

Groups and associations expressing general support or opposition to the CMP are listed under Chapter 501 of this title (relating to Coastal Management Program).

The new sections are adopted pursuant to the Texas Natural Resource Code, §33.204(a), which provides the council with the authority to promulgate rules that adopt the CMP goals and policies and pursuant to Texas APA, Subchapter A, §2001.004, which requires the council to adopt rules of practice setting forth the nature and requirements of all formal and informal procedures.

§506.11. Definitions. The following words, terms, and phrases, when used in

this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Applicant—Any individual, public or private corporation, partnership, association, or other entity organized or existing under the laws of any state, or any state, regional, or local government that, following management program approval, files an application for a federal license or permit to conduct an activity affecting the Texas Coastal Management Program (CMP) area.

Applicant agency—Any unit of state or local government or any related public entity such as a special purpose district, which, following federal CMP approval, submits an application for federal assistance.

Assistant administrator—The assistant administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, United States Department of Commerce.

Associated facilities—All proposed facilities:

(A) which are specifically designed, located, constructed, operated, adapted, or otherwise used, in full or in major part, to meet the needs of a federal action (e.g., activity, development project, license, permit, or assistance); and

(B) without which the federal action, as proposed, could not be conducted.

CMP boundary—The CMP boundary established in §503.1 of this title (relating to the Coastal Management Program Boundary).

Coastal area—The geographic area comprising all the counties in Texas which have any tidewater shoreline, including that portion of the bed and water of the Gulf of Mexico within the jurisdiction of the State of Texas.

Consistency certification—The statement submitted by an applicant for a federal license or permit subject to federal consistency review certifying that the proposed activity complies with the CMP goals and policies.

Consistency determination—The statement and supporting documentation submitted by a federal agency undertaking or planning an activity subject to federal consistency review certifying that the activity is consistent with the CMP, to the maximum extent practicable.

Consistent—To the maximum extent practicable—Being fully consistent with the CMP unless compliance is prohibited based upon the requirements of existing law.

Federal action—A federal activity, federal license or permit, or federal assistance as defined in this section.

Federal activity—Any function performed by or on behalf of a federal agency

in the exercise of its statutory responsibilities including federal development projects but not issuance of a federal license or permit.

Federal assistance—Assistance provided under a federal program to an applicant agency through grant or contractual arrangements, loans, subsidies, guarantees, insurance, or other forms of financial aid.

Federal license or permit—Any authorization, certification, approval, or other form of permission which any federal agency is empowered to issue to an applicant, including renewals and major amendments of federal license and permit activities not previously reviewed by the state, renewals and major amendments of federal license and permit activities previously reviewed by the state which are filed after, and are subject to, amendments not in existence at the time of original state review, and renewals and major amendments of federal license and permit activities previously reviewed by the state which will cause effects within the CMP area substantially different from those originally reviewed by the state.

Interagency coordination group—For purposes of the general agreement in §506.28 of this title (relating to General Consistency Agreements), a group established to review proposed federal development projects and whose duties include, among other things, advising on the consistency determination. Voting members of the group shall include, at a minimum, representatives of the local project sponsor and federal and state natural resource and regulatory agencies with jurisdiction over the project. The group shall seek and promote broad participation by local governments and coastal citizen groups.

Outer continental shelf (OCS) plan—Any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 United States Code Annotated, §§1331-1356) and the regulations promulgated thereunder, which is submitted to the secretary of the interior or a designee following CMP approval and which describes in detail federal license or permit activities.

State single point of contact—The state single point of contact for the Texas Review and Comment System as defined by 1 TAC §5.194 (relating to Definitions).

§506.12. Federal Actions Subject to the Coastal Management Program.

(a) For purposes of this section, the following federal actions within the CMP boundary may adversely affect coastal natural resource areas (CNRAs):

(1) Federal Activities and Development Projects:

(A) United States Department of the Interior. Minor and technical modifications to the boundaries of the Coastal Barrier Resource System under 16 United States Code Annotated, §3503(c);

(B) United States Environmental Protection Agency. Selection of remedial actions under 42 United States Code Annotated, §9604(c);

(C) United States Army Corps of Engineers:

(i) small river and harbor improvement projects under 33 United States Code Annotated, §577;

(ii) water resources development projects under 42 United States Code Annotated, §1962d-5;

(iii) small flood control projects under 33 United States Code Annotated, §701s;

(iv) small beach erosion control projects under 33 United States Code Annotated, §426g;

(v) operation and maintenance of civil works projects under the Code of Federal Regulations, Title 33, Parts 335 and 338; and

(vi) dredging projects under the Code of Federal Regulations, Title 33, Part 336;

(vii) approval for projects for the prevention or mitigation of damages to shore areas attributable to federal navigation projects pursuant to 33 United States Code Annotated, §426i;

(viii) approval for projects for the placement on state beaches of beach-quality sand dredged from federal navigation projects pursuant to 33 United States Code Annotated, §426j;

(D) Federal Emergency Management Agency:

(i) model floodplain ordinances;

(ii) promulgation of floodplain rules; and

(iii) approval or suspension of a community's eligibility to sell flood insurance under the Code of Federal Regulations, Title 44, Part 59, Subpart B;

(E) General Services Administration:

(i) acquisitions under 40 United States Code Annotated, §602 and §603; and

(ii) construction under 40 United States Code Annotated, §605;

(F) All federal agencies. All other development projects.

(2) Federal License and Permit Activities:

(A) Environmental Protection Agency:

(i) National Pollution Discharge Elimination System (NPDES) permits under 33 United States Code Annotated, §1342;

(ii) ocean dumping permits under 33 United States Code Annotated, §1412;

(iii) approvals under 42 United States Code Annotated, §6924(d); and

(iv) approvals of National Estuary Program Comprehensive Conservation Management Plans under 33 United States Code Annotated, §1330f;

(B) United States Army Corps of Engineers:

(i) ocean dumping permits under 33 United States Code Annotated, §1413;

(ii) dredge and fill permits under 33 United States Code Annotated, §1344;

(iii) permits under 33 United States Code Annotated, §401;

(iv) permits under 33 United States Code Annotated, §403; and

(v) Memoranda of Agreement for mitigation banking;

(C) United States Department of Transportation:

(i) approvals under 23 United States Code Annotated, §106; and

(ii) approvals under 33 United States Code Annotated, §525;

(D) Federal Aviation Administration. Certificates under 49 United States Code Annotated, §1432;

(E) Federal Energy Regulatory Commission:

(i) certificates under 15 United States Code Annotated, §717f;

(ii) licenses under 16 United States Code Annotated, §797(e); and

(iii) exemptions under 16 United States Code Annotated, §2705(d);

(F) Nuclear Regulatory Commission. Licenses under 42 United States Code Annotated, §2133.

(3) State and Local Government Applications for Federal Assistance.

(A) United States Environmental Protection Agency. Funding for nonpoint source (NPS) abatement to cities with populations exceeding 100,000 under 33 United States Code Annotated, §1329.

(B) United States Department of Transportation. Federal assistance for construction of roads or rights-of-way for which an environmental impact statement (EIS) or environmental assessment (EA) is prepared.

(b) For purposes of this section, the following are federal actions outside the CMP boundary but within OCS waters, or on excluded federal land located within the coastal area, that may adversely affect CNRAs.

(1) Federal Activities and Development Projects: All federal agencies. Activities in OCS waters or within the coastal area occurring within federal lands excluded from the CMP boundary but which may adversely affect CNRAs.

(2) Federal License and Permit Activities:

(A) United States Department of the Interior:

(i) permits under 43 United States Code Annotated, §1340, in OCS waters; and

(ii) rights-of-way under 43 United States Code Annotated, §1334(e), in OCS waters;

(B) Environmental Protection Agency:

(i) NPDES permits under 33 United States Code Annotated, §1342, in OCS waters;

(ii) ocean dumping permits 33 United States Code Annotated, §1412, in OCS waters;

(C) United States Army Corps of Engineers. Ocean dumping permits under 33 United States Code Annotated, §1413, in OCS waters;

(D) United States Department of Transportation: Deep water port

licenses under 33 United States Code Annotated, §1503, in OCS waters.

(3) OCS Exploration, Development, and Production Activities. United States Department of the Interior:

(A) OCS activities described in detail in OCS plans, including pipeline activities, that may adversely affect CNRAs;

(B) OCS lease sales within the western and central Gulf of Mexico under 43 United States Code Annotated, §1337.

(c) In the event that an activity falling below thresholds for referral approved under Chapter 505, Subchapter B of this title (relating to Council Certification of State Agency Rules and Approval of Thresholds for Referral) requires both a federal permit or license under Chapter 506 of this title (relating to Council Procedures for Federal Consistency with Coastal Management Program Goals and Policies) and an equivalent state permit, authorization, or action under Chapter 505 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies), the council shall determine the consistency of the state action using the process provided in Chapter 505 of this title (relating to Council Procedure for State Consistency with Coastal Management Program Goals and Policies) in lieu of determining consistency of the federal action using the process prescribed in Chapter 506 of this title (relating to Council Procedures for Federal Consistency with Coastal Management Program Goals and Policies). The determination regarding the consistency of the state action under Chapter 505 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies) shall constitute the state's consistency concurrence or objection for the equivalent federal action.

(d) In the event that an activity above thresholds for referral approved under Chapter 505, Subchapter B of this title (relating to Council Certification of State Agency Rules and Approval of Thresholds for Referral) requires both a federal permit or license and an equivalent state permit, authorization, or action under Chapter 505 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies), the council shall, upon the request of the applicant, direct that either the consistency of the state action be determined using the process provided in Chapter 5057 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies) or the consistency of

the federal action be determined using the process prescribed in Chapter 506 of this title (relating to Council Procedures for Federal Consistency with Coastal Management Program Goals and Policies), but not both. The determination regarding consistency under the process selected by the council shall constitute the state's determination regarding consistency of the equivalent federal or state action.

§506.20. Consistency Determinations for Federal Activities and Development Projects. At the earliest practicable time, but in no event later than 90 days prior to final approval, a federal agency considering the approval of a federal activity or development project listed in §506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program) shall provide the council secretary with a consistency determination that includes the following information:

(1) a brief statement, based upon an evaluation of the relevant CMP provisions, indicating whether or not the proposed activity or development project will be undertaken in a manner consistent with the CMP, to the maximum extent practicable; and

(2) a detailed description of the proposed activity or development project and its associated facilities which is adequate to permit an assessment of their probable effects on CNRAs, and comprehensive data and information sufficient to support the federal agency's consistency statement. The amount of detail in the statement evaluation, activity description, and supporting information shall be commensurate with the expected effects of the activity or development project on CNRAs. While federal agencies must be consistent to the maximum extent practicable with the enforceable, mandatory policies of the CMP, the agencies need only demonstrate adequate consideration of policies which are in the nature of recommendations. Federal agencies need not evaluate effects for which the CMP does not contain mandatory or recommended policies.

§506.21. Notification of Negative Determinations.

(a) If a federal agency determines that a proposed activity or development project listed in §506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program) will not adversely affect any CNRA, the federal agency shall at the earliest practicable time, but in no event later than 90 days prior to final approval, provide the chairman of the council with a notification briefly providing the reasons for the federal agency's negative determination.

(b) The chairman of the council, in coordination with the governor's office, may seek secretarial mediation (as provided in the Code of Federal Regulations, Title 15, Part 930, Subpart G, §930.110 et seq) whenever a serious disagreement arises over a negative determination.

§506.22. General Consistency Determinations for Proposed Activities.

(a) Federal agencies may provide a general consistency determination, in accordance with the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.37(b), for repeated activities other than development projects which cumulatively may adversely affect CNRAs.

(b) If a federal agency issues a general consistency determination, the federal agency shall periodically consult with the council to discuss the manner in which the incremental actions are being undertaken.

§506.23. Consistency Determinations for Development Projects.

(a) Federal agencies may provide a single consistency determination for a proposed development project, in accordance with the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.37(c), where the agency has sufficient information to determine consistency from planning to completion.

(b) In cases where decisions related to a proposed development project will be made in phases based upon developing information, and the federal agency retains the discretion to implement alternative decisions on the basis of such information, a consistency determination shall be required for each decision in accordance with the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.37(c).

§506.24. Consistency Determinations for Activities Initiated Prior to Federal Approval of the Coastal Management Program.

(a) Federal agencies shall provide a consistency determination for ongoing activities listed in §506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program), other than development projects, initiated prior to federal approval of the CMP where the agency retains discretion to reassess and modify the activity. In accordance with the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.38(a), federal agencies shall provide the council with a consistency determination for such ongoing activities no later than 120 days after program approval.

(b) Federal agencies shall provide a consistency determination, in accordance with the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.38(b), for phased development projects described in §506.23(b) of this title (relating to Consistency Determinations for Development Projects) and initiated prior to federal approval of the CMP, for those phases of the project for which the agency retains discretion to reassess and modify the activity following CMP approval.

(c) Notwithstanding the requirements of §506.26 of this title (relating to Referral of Federal Activities and Development Projects), the council does not intend to refer a consistency determination for ongoing maintenance of commercially navigable channels for projects initiated prior to federal approval of the CMP, if the council and the United States Army Corps of Engineers agree to an extension of the deadline for council response to the consistency determination, as provided in the Code of Federal Regulations, Title 15, Part 930, Subpart C, §930.41(b).

§506.25. Public Notice and Comment.

(a) Upon receipt of a consistency determination, the council secretary shall publish public notice of the consistency determination in the *Texas Register*.

(b) The public notice shall provide a summary of the proposed activity, announce the availability of the consistency determination for inspection, and request that comments be submitted to the council secretary within 30 days of publication in the *Texas Register*.

(c) When appropriate, the chairman may extend the public comment period or schedule a public hearing on:

(1) the consistency determination; and

(2) whether referral to the council is appropriate.

(d) After the close of the public comment period, the chairman shall issue a written decision to refer the matter to the council or not to refer the matter to the council for action. Upon issuance of the chairman's decision, the council secretary shall immediately notify the council members, applicant, federal agency, and other affected parties, if any.

§506.26. Referral of Federal Activities and Development Projects.

(a) The council shall review any federal activity or development project that the chairman refers to the council for review.

(b) To refer a federal activity or development project to the council, the chairman must submit the action to the council secretary in writing.

(c) The council secretary shall place the action on the agenda of the earliest council meeting at which consideration of the federal activity or development project is reasonably practicable.

(d) If the council does not issue a final decision, either agreeing with or disagreeing with a federal agency's consistency determination, within 45 days of the date the council secretary receives a consistency determination with all required information, then the chairman shall notify the federal agency of the status of the review and the basis for further delay.

(e) The federal agency may presume council agreement with the federal agency's consistency determination 45 days after the date the council secretary receives a consistency determination with all required information, unless the chairman requests an extension of time to review the matter. Federal agencies shall approve the first request for an extension of 15 days or less. In considering whether a longer or additional extension period is appropriate, federal agencies should consider the magnitude and complexity of, or the information contained in, the consistency determination.

(f) A federal agency shall not grant final approval for an activity or development project identified in §506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program) until after the expiration of 90 days from the date the federal agency provides the council secretary with its consistency determination, unless the federal agency and the council agree to an alternative period of time.

§506.27. Council Hearing to Review Federal Activities and Development Projects.

(a) Following referral of a federal activity or development project, the council shall review and either agree with or disagree with the consistency determination within 90 days of the date the council secretary received the consistency determination.

(b) The council secretary shall, by certified mail or hand delivery, provide notice of the hearing at which the council will review the federal activity or development project to the federal agency.

(c) If the council decides to disagree with a consistency determination, the council shall notify the federal agency and the assistant administrator of its decision to disagree with the consistency determination.

(d) The council's decision to disagree with the consistency determination shall include:

(1) a description of how the proposed activity is inconsistent with specific CMP goals and policies;

(2) a description of any available alternative measures that would permit the proposed activity to be conducted in a manner consistent to the maximum extent practicable with the CMP; and

(3) in cases where the council's decision to disagree is based upon a finding that the federal agency failed to supply sufficient information, the council shall include a description of the nature of the information requested and the necessity of having such information to determine the consistency of the federal activity with the CMP.

(e) The chairman of the council, in coordination with the governor's office, may seek secretarial mediation (as provided in Code of Federal Regulations, Title 15, Part 930, Subpart G, §930.110 et seq) whenever a serious disagreement arises over a consistency determination.

§506.28. General Consistency Agreements.

(a) The council may issue a general consistency agreement with respect to a federal activity or development project. If the conditions of a general consistency agreement are satisfied, the federal activity or development project is deemed consistent, to the maximum extent practicable, with the CMP goals and policies and will not be subject to council review under §505.26 of this title (relating to Referral of Federal Activities and Development Projects).

(b) The council shall issue a general consistency agreement for a federal development project for which:

(1) the federal agency has elected to establish an interagency coordination group whose duties include advising the federal agency on the consistency of the project;

(2) the interagency coordination group includes among its voting members a minimum of three council members from natural resource agencies or their representatives;

(3) the interagency coordination group, including a majority of the council members or their representatives on the interagency coordination group, finds that the federal development project is consistent, to the maximum extent practicable, with the CMP goals and policies; and

(4) the federal agency adopts the finding of the interagency coordination group and submits it to the council as its consistency determination for the project.

(c) Disposal or placement of dredged material in existing dredge disposal sites identified and actively used as de-

scribed in an environmental assessment or environmental impact statement issued prior to the effective date of this chapter shall be presumed consistent with §501.14(j)(1) of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas), unless such existing disposal or placement is modified in design, size, use, or function, provided that the material is generated by maintenance dredging of commercially navigable waterways for which a federal development project undergoes evaluation pursuant to the interagency coordination group process under subsection (b) of this section and such process was initiated prior to the adoption of this chapter, and provided further, if the interagency coordination group approves the project that requires disposal or placement in confined sites and/or beneficial use of the dredged material from those waterways and results in cessation of open water disposal of dredged material and such project is authorized in a final supplemental environmental impact statement.

§506.30. Consistency Certifications for Federal License and Permit Activities.

(a) Upon filing an application for a federal license or permit listed under §506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program), the applicant shall provide to the council secretary a consistency certification that reads as follows: The proposed activity complies with Texas' approved CMP and will be conducted in a manner consistent with such program.

(b) The applicant shall include with the consistency certification all of the following information:

(1) a detailed description of the proposed activity and its associated facilities which is adequate to permit an assessment of their probable effects on CNRAs. Maps, diagrams, technical data, and other relevant material must be submitted when a written description will not adequately describe the proposed activity. The applicant may submit the federal application and all supporting material provided to the federal agency to meet the requirements of this paragraph, if the application and supporting material contain the required material;

(2) a list identifying all federal, state, and local permits or authorizations subject to the CMP and required for the proposed activity and its associated facilities;

(3) a brief assessment relating to the relevant elements of the CMP and the probable effects of the proposed activity and its associated facilities on CNRAs; and

(4) a brief set of findings, derived from the assessment, indicating that

the proposed activity, its associated facilities, and their effects are all consistent with the provisions of the CMP. While federal license and permit activities must be consistent with the enforceable, mandatory policies of the CMP, applicants need only demonstrate adequate consideration of policies which are in the nature of recommendations. Applicants need not make findings with respect to effects for which the CMP does not contain mandatory or recommended policies.

(c) Applicants shall, to the extent practicable, consolidate related federal licenses and permits identified in §506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program) to assist the council in minimizing duplication of effort and unnecessary delays by reviewing all licenses and permits relating to a project at the same time.

(d) If the council has not notified the applicant within 15 days that additional information is required, the certification shall be considered complete for purposes of activating the time periods within which the council must act on the certification.

§506.31. Council Assistance. Upon request of the applicant, the council shall provide assistance for development of the assessment and findings required by §506.30(b)(4) and (5) of this title (relating to Consistency Certifications for Federal License and Permit Activities).

§506.32. Public Notice and Comment.

(a) Upon receipt of a consistency certification, the council secretary shall publish public notice of the consistency certification in the *Texas Register*.

(b) The public notice shall provide a summary of the proposed activity, announce the availability of the consistency certification for inspection, and request that comments be submitted to the council secretary within 30 days of publication in the *Texas Register*.

(c) When appropriate, the chairman may extend the public comment period or schedule a public hearing on:

(1) the consistency certification; and

(2) whether referral to the council is appropriate.

(d) After the close of the public comment period, the chairman shall issue a written decision to refer the matter to the council or not to refer the matter to the council for action. Upon issuance of the chairman's decision, the council secretary shall immediately notify the council members, applicant, federal agency, and other affected parties, if any.

§506.33. Referral of Federal License or Permit.

(a) The council shall review any federal license or permit that the chairman refers to the council for review.

(b) To refer a federal license or permit to the council, the chairman must submit the request for referral to the council secretary in writing.

(c) The council secretary shall add the action to the agenda of the earliest council meeting at which consideration of the action is reasonably practicable. If no regularly scheduled council meeting will allow the council to complete a review of the action within 90 days of receipt of the consistency certification, the council secretary shall notify the chairman, who shall schedule a special meeting to consider the action and any other appropriate matters.

(d) If the council has not issued a decision with respect to a federal license or permit within 90 days of the date when the council secretary receives a consistency certification with all required information, then the chairman shall notify the applicant and the federal agency of the status of the review and the basis for further delay.

(e) If the chairman does not refer a federal license or permit to the council within 90 days of the date when the council secretary receives a consistency certification with all required information, then that action is conclusively presumed to be consistent with the CMP.

§506.34. Council Hearing to Review Federal License or Permit.

(a) Following referral of a federal license or permit, the council shall review and either concur with or object to the consistency certification within 180 days of the date when the council secretary received the consistency certification.

(b) The council secretary shall, by certified mail or hand delivery, provide notice of the hearing at which the council will review the federal license or permit to the federal agency and the applicant.

(c) If the council decides to object to a consistency certification, the council shall notify the applicant, the federal agency, and the assistant administrator.

(d) The council's objection shall include:

(1) a description of how the proposed activity is inconsistent with specific CMP goals and policies;

(2) a description of any available alternative measures that would permit the proposed activity to be conducted in a manner consistent with the CMP.

(3) in cases where the council objects on the grounds of insufficient information, a description of the nature of the information requested and the necessity of having such information to determine the consistency of the activity with the CMP; and

(4) a statement informing the applicant of a right of appeal to the secretary of commerce on the grounds that the proposed activity is consistent with the objectives or purposes of the federal Coastal Zone Management Act (CZMA), 16 United States Code Annotated, §§1451-1464, or is necessary in the interest of national security as provided in the Code of Federal Regulations, Title 15, Part 930, Subpart H, §930.120 et seq.

(e) If the council objects to a consistency certification related to a federal license or permit, the federal agency shall not issue the federal license or permit, except as provided in the appeals process established in the Code of Federal Regulations, Title 15, Part 930, Subpart H, §930.120 et seq.

§506.35. General Concurrence. The council may develop general concurrences in accordance with the Code of Federal Regulations, Title 15, Part 930, Subpart D, §930.53(c).

§506.40. Consistency Certifications for Outer Continental Shelf Exploration, Development, and Production Activities.

(a) Upon submission to the secretary of the interior or designee of an OCS plan, which must include a detailed description of the federal license or permit activities listed in §506.12(b)(3) of this title (relating to Federal Actions Subject to the Coastal Management Program), the person submitting the plan shall provide the council secretary with a copy of the plan along with a consistency certification that reads as follows: The proposed activities described in detail in this plan comply with Texas' approved CMP and will be conducted in a manner consistent with such program.

(b) The person submitting the plan shall include all of the following information in support of the consistency certification:

(1) a detailed description of the proposed activities and their associated facilities which is adequate to permit an assessment of their probable effects on CNRAs. Maps, diagrams, technical data, and other relevant material must be submitted when a written description will not adequately describe the proposed activities;

(2) a list identifying all federal, state, and local permits or authorizations subject to the CMP and required for the

proposed activities and their associated facilities;

(3) a brief assessment relating the probable effects of the activities and their associated facilities on CNRAs to the relevant elements of the CMP; and

(4) a brief set of findings, derived from the assessment, indicating that each of the proposed activities, their associated facilities, and their effects are all consistent with the provisions of the CMP. While those activities listed in §506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program) must be consistent with the enforceable, mandatory policies of the CMP, the person submitting the plan need only demonstrate adequate consideration of policies which are in the nature of recommendations. Applicants need not make findings with respect to effects for which the CMP does not contain mandatory or recommended policies.

(c) The council strongly encourages persons submitting plans to consolidate those related federal licenses and permits which are not required to be described in detail in the plan but which are subject to council review to assist the council in minimizing duplication of effort and unnecessary delays by reviewing all licenses and permits relating to a project at the same time.

(d) If the council has not notified the person submitting the plan within 15 days that additional information is required, the certification shall be considered complete for purposes of activating the time periods within which the council must act on the certification.

§506.41. Public Notice and Comment.

(a) Upon receipt of a consistency certification, the council secretary shall publish public notice of the consistency certification in the *Texas Register*.

(b) The public notice shall provide a summary of the proposed activity, announce the availability of the consistency certification for inspection, and request that comments be submitted to the council secretary within 30 days of publication in the *Texas Register*.

(c) When appropriate, the chairman may extend the public comment period or schedule a public hearing on:

(1) the consistency certification; and

(2) whether referral to the council is appropriate.

(d) After the close of the public comment period, the chairman shall issue a written decision to refer the matter to the

council or not to refer the matter to the council for action. Upon issuance of the chairman's decision, the council secretary shall immediately notify the council members, applicant, federal agency, and other affected parties, if any.

§506.42. Referral of Federal License or Permit Described in Outer Continental Shelf Plan.

(a) The council shall review any federal license or permit described in detail in an OCS plan that the chairman refers to the council for review.

(b) To refer a federal license or permit to the council, the chairman must submit the request for referral to the council secretary in writing.

(c) The council secretary shall place the action on the agenda of the earliest council meeting at which consideration of the action is reasonably practicable. If no regularly scheduled council meeting will allow the council to act on the action within 90 days of receipt of the consistency certification, the council secretary shall notify the chairman, who shall schedule a special meeting to consider the action and any other appropriate matters.

(d) If the council has not issued a decision with respect to a federal license or permit within 90 days of the date the council secretary received the consistency certification with all required information, then the chairman shall notify the person submitting the plan, the secretary of the interior, and the assistant administrator of the status of the review and the basis for further delay. If written notice is not postmarked within the 90 days provided for in this subsection, then the council's concurrence with the consistency certification shall be conclusively presumed.

(e) If the chairman does not refer a federal license or permit to the council within 90 days of the date the council secretary receives a consistency certification with all required information, then the council's concurrence with the consistency certification shall be conclusively presumed.

(f) If the council has not issued a decision with respect to a federal license or permit within 180 days of the date the council secretary receives a consistency certification with all required information, then the council's concurrence with the consistency certification shall be conclusively presumed.

§506.43. Council Hearing to Review Federal License or Permit Described in Outer Continental Shelf Plan.

(a) Following referral of a federal license or permit, the council shall review

and either concur with or object to the consistency certification within 180 days of the date the council secretary received the consistency certification.

(b) The council secretary shall, by certified mail or hand delivery, provide notice of the hearing at which the council will review the federal license or permit to the person submitting the plan, the secretary of the interior, and the assistant administrator.

(c) If the council decides to object to a consistency certification, the council shall notify the person submitting the plan, the secretary of the interior, and the assistant administrator.

(d) The council's objection shall include for each license or permit activity objected to:

(1) a description of how the proposed activity is inconsistent with specific CMP goals and policies;

(2) a description of any available alternative measures that would permit the proposed activity to be conducted in a manner consistent with the CMP;

(3) in cases where the council objects on the grounds of insufficient information, a description of the nature of the information requested and the necessity of having such information to determine the consistency of the activity with the CMP; and

(4) a statement informing the person submitting the plan of a right of appeal to the secretary of commerce on the grounds that the proposed activity is consistent with the objectives or purposes of the CZMA or is necessary in the interest of national security as provided in the Code of Federal Regulations, Title 15, Part 930, Subpart H, §930.120 et seq.

(e) If the council objects to a consistency certification related to a federal license or permit described in detail in a plan, the federal agency shall not issue the federal license or permit, except as provided in the appeals process established in the Code of Federal Regulations, Title 15, Part 930, Subpart H, §930.120 et seq.

§506.44. Effect of Council Concurrence.

(a) If the council either issues a concurrence or is conclusively presumed to concur with the consistency certification of a person submitting a plan, then the person submitting the plan shall not be required to submit additional consistency certifications to the council secretary for the federal licenses and permits to which the concurrence applies.

(b) To allow the council to monitor those license and permit activities described in detail in a plan whose consistency certifi-

cation has received council concurrence, the person submitting the plan shall provide the council secretary with copies of applications for those license and permit activities.

§506.50. Notice to the Council of Applications for Federal Assistance.

(a) The state single point of contact shall provide the council secretary with copies of all applications for federal assistance listed in §506.12 of this title (relating to Federal Actions Subject to the Coastal Management Program).

(b) The council secretary shall distribute copies of the applications to all council members.

§506.51. Referral of Applications for Federal Assistance.

(a) The council shall review any application for federal assistance that the chairman refers to the council for review.

(b) To refer an application for federal assistance to the council, the chairman must submit the request for referral to the council secretary in writing.

(c) The council secretary shall add the application to the agenda of the earliest council meeting at which consideration of the action is reasonably practicable.

(d) If the chairman does not refer an application to the council within 30 days of the date the council secretary receives a copy of the application, then the application is conclusively presumed to be consistent with the CMP.

§506.52. Council Hearing to Review Applications for Federal Assistance.

(a) Following referral of an application for federal assistance, the council shall review and either concur with or object to the application for federal assistance within the schedule established in the regulations governing the Texas Review and Comment System (1 TAC §5.191 et seq. relating to Introduction and General Provisions of Texas Review and Comment System).

(b) The council secretary shall, by certified mail or hand delivery, provide notice of the hearing at which the council will review the application for federal assistance to the applicant, the federal agency, and the assistant administrator.

(c) The council's objection shall include:

(1) a description of how the proposed activity is inconsistent with specific CMP goals and policies;

(2) a description of any available alternative measures that would permit the proposed activity to be conducted in a manner consistent with the CMP;

(3) in cases where the council objects on the grounds of insufficient information, a description of the nature of the information requested and the necessity of having such information to determine the consistency of the activity with the CMP, and

(4) a statement informing the applicant of a right of appeal to the secretary of commerce on the grounds that the proposed activity is consistent with the objectives or purposes of the CZMA or is necessary in the interest of national security as provided in the Code of Federal Regulations, Title 15, Part 930, Subpart H, §930.120 et seq.

(d) If the council objects to an application for federal assistance, the federal agency shall not approve assistance for the activity, except as provided in the appeals process established in the Code of Federal Regulations, Title 15, Part 930, Subpart H, §930.120 et seq.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 19, 1994.

TRD-9448290 Garry Mauro
Chairman
Coastal Coordination
Council

Effective date: June 15, 1994

Proposal publication date: March 18, 1994

For further information, please call: (512) 305-9129

TITLE 34. PUBLIC FINANCE

Part IX. Texas Bond Review Board

Chapter 181. Bond Review Board

Subchapter A. Bond Review Rules

• 34 TAC §§181.2, 181.3, 181.12

The Texas Bond Review Board adopts amendments to §181.2 and §181.3, and new §181.12, concerning policies and procedures, without changes to the proposed text as published in the July 15, 1994, issue of the *Texas Register* (19 TexReg 5456).

The amendments clarify procedures, and the new section clarifies agency policy on charges for public records, in compliance with Texas Civil Statutes, Article 6252-17a, which require agencies to adopt rules specifying charges for public records.

No comments were received regarding adoption of the amendments and new section.

The amendments are adopted under §3, Chapter 1078, Acts of the 70th Legislature, Regular Session, 1987 (Texas Civil Statutes, Article 717k-7), which gives the Texas Bond Review Board the authority to adopt rules governing application for review, the review process, and reporting requirements involved in the issuance of state bonds. The new section is adopted in compliance with actions taken by the 73rd Texas Legislature in House Bill 1009 in relation to Texas Civil Statutes, Article 6252-17a, which require agencies to adopt rules specifying charges for copies of open records.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 9, 1994.

TRD-9448366 Albert L. Bacarisse
Executive Director
Texas Bond Review Board

Effective date: October 11, 1994

Proposal publication date: July 15, 1994

For further information, please call: (512) 463-1741

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part VI. Texas Department of Criminal Justice

Chapter 157. State Jail Felony Facilities

• 37 TAC §§157.87, 157.91, 157.95

The Texas Department of Criminal Justice adopts amendments to §§157.87, 157.91, and 157.95, concerning state jail felony facilities, without changes to the proposed text as published in the August 12, 1994, issue of the *Texas Register* (19 TexReg 6343).

The sections will provide for additional available capacity in state jails by increasing the number of beds that can be built and used in each dormitory housing unit.

How the sections will function. The sections are standards for providing physical plant for each confinee in a state jail, and are adjusted to allow for 54 rather than 50 confinees in each dormitory housing unit.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Government Code, §492.013(a), which gives the Board authority to adopt rules as necessary for the operation of the department.

Cross-Reference by Statute. Government Code, Chapter 507, gives the Board authority to oversee the state jail felony system.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 19, 1994.

TRD-9448385 Carl Reynolds
General Counsel
Texas Department of
Criminal Justice

Effective date: October 12, 1994

Proposal publication date: August 12, 1994

For further information, please call: (512) 463-9693

Chapter 163. Community Justice Standards

• 37 TAC §163.45

The Texas Department of Criminal Justice adopts an amendment to §163.45 concerning allocation formula for community corrections program, without changes to the proposed text as published in the August 12, 1994, issue of the *Texas Register* (19 TexReg 6343).

The section will provide fair and equitable state funding for community corrections programs operated by community supervision and corrections departments.

The section applies a formula to distribute approximately \$50 million in state funding, but includes 5.0% increase and decrease brackets that keep recipients from experiencing the drastic changes in funding that would result from pure application of the formula.

No comments were received regarding adoption of the amendment.

Statutory authority; interpretation of how provisions authorize or require the sections. The amendment is adopted under the Government Code, §492.013(a), which gives the Board authority to adopt rules as necessary for the operation of the department.

Cross-Reference by Statute. Government Code, §499.071(b), and Code of Criminal Procedure, Article 42.13, §10(a)(3), provide for the adoption of an allocation formula for community corrections program funding.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 19, 1994.

TRD-9448393 Carl Reynolds
General Counsel
Texas Department of
Criminal Justice

Effective date: October 12, 1994

Proposal publication date: August 12, 1994

For further information, please call: (512) 463-9693